

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Jonathan William Bell

Docket No. 282545

LC No. 06-000922-FH

Mark J. Cavanagh  
Presiding Judge

Karen M. Fort Hood

Alton T. Davis  
Judges

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The Court orders that the March 19, 2009, opinion is hereby AMENDED. The opinion contained the following clerical error:

Page 1, paragraph 4, the reference to *Harris, supra* at 102 should read: *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

In all other respects, the opinion remains unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 31 2009  
Date

*Sandra Schultz Mengel*  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONATHAN WILLIAM BELL,

Defendant-Appellant.

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UNPUBLISHED

March 19, 2009

No. 282545

Washtenaw Circuit Court

LC No. 06-000922-FH

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Defendant entered a plea of no contest to soliciting a minor to commit a felony, MCL 750.157c, and indecent exposure, MCL 750.335a, and was sentenced to five years' probation. This Court granted defendant's delayed application for leave to appeal. We remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant challenges the denial of two motions to withdraw his plea. He maintains that he did not understand the proceedings and was not competent to render a knowing, voluntary, and intelligent waiver of his rights. In response to the first motion, the court reviewed the videorecording of the plea and concluded that defendant had understood the proceedings and the relevant concepts explained to him. With the second motion, defendant attached a report from Charles R. Clark, Ph.D., who had evaluated defendant and found that he was functioning in the moderate range of mental retardation with a Full Scale IQ of 51. Dr. Clark concluded that defendant would not have been competent to understand the proceedings or make knowing and intelligent waivers. Nonetheless, the trial court reaffirmed its earlier conclusion.

We review the denial of defendant's motions for an abuse of discretion. *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997).

In *Harris, supra* at 102, this Court held:

A criminal defendant is presumed competent to stand trial absent a showing that "he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner." MCL 330.2020(1); MSA 14.800(1020)(1). An incompetent defendant

“shall not be proceeded against while he is incompetent.” MCL 330.2022(1); MSA 14.800(1022)(1). The issue of a defendant’s competence to stand trial may be raised by either party or the court. MCL 330.2024; MSA 14.800(1024). Although the determination of a defendant’s competence is within the trial court’s discretion . . . a trial court has the duty of raising the issue of incompetence where facts are brought to its attention which raise a “bona fide doubt” as to the defendant’s competence. . . . However, the decision as to the existence of a “bona fide doubt” will only be reversed where there is an abuse of discretion. [Citations omitted.]

Dr. Clark’s report raised serious questions as to the impact of defendant’s mental retardation on his capability to understand the nature and object of the proceedings. Dr. Clark concluded that defendant “manifested considerable cognitive impairment in all areas tested, [and was] weakest in terms of functions that rely on verbal skills and understanding, such as word knowledge, mathematical reasoning, concept formation, judgment and problem solving, and the kind of attention and concentration that assists memory and learning of verbal material.” Further, he described questioning that indicated defendant had challenges understanding abstract concepts, did not understand the concept of a trial or a jury, had a questionable understanding of a judge’s and lawyer’s functions, and did not know what a prosecutor was or did. Defendant understood that he was being charged with “asking the girls to have sex”, but did not understand the potential penalties, as he did not have a conceptual understanding of the units of time, i.e., the meaning of a year. He understood that while on probation he had to report monthly, could not go within “25 feet” of the victim’s house, and had to be “far far away”, “five feet” from schools, parks or swimming pools. He understood that he would go to jail if he violated these terms. When asked what happened in court, defendant indicated that they tried to fight it and lost. He was confused as to the concept of “no contest”, thinking it meant not guilty, and seemed unclear about whether he had entered a plea. After explaining these legal concepts, Dr. Clark asked defendant if he understood; defendant essentially gave the same answers. Dr. Clark concluded:

[B]ecause of his mental retardation [defendant] would not be competent to stand trial now. And there is no reason to believe that last September, when the Court accepted a plea of no contest, [defendant] had any better understanding of his legal situation, including his rights and procedural options, or was in any better position to assist in his defense. He has no real knowledge of the essentials, including the adversarial nature of criminal proceedings and the meaning and determination of guilt, the basic positions of court officers and personnel, and the range of outcomes and alternatives. While he is agreeable, as he was with me in cooperating with the evaluation, he may well not understand what he has agreed to. His deficient understanding may only be apparent when he is asked to state in his own words what he has agreed to do. In talking with him now, and considering his cognitive disability, I cannot conclude that the waivers he made last year in entering a no contest plea were done knowingly and intelligently.

MCL 330.2026(1) provides:

Upon a showing that the defendant may be incompetent to stand trial, the court shall order the defendant to undergo an examination by personnel of either the

center for forensic psychiatry or other facility officially certified by the department of mental health to perform examinations relating to the issue of incompetence to stand trial. . . .

In *People v Whyte*, 165 Mich App 409, 411; 418 NW2d 484 (1988), this Court held that this statute applied where, after a plea was taken, a question arose as to the defendant's competency. The *Whyte* Court stated:

In [*People v Matheson*, 70 Mich App 172, 179; 245 NW2d 551 (1976),] the Court concluded that a trial court must recognize its obligation to render a separate finding of competence where a plea is offered and the record provides "significant evidence of possible incompetence." . . . Here, with the inclusion of the presentence reports as part of the record, there is significant evidence of possible incompetency. Despite the fact that these reports were not part of the record until after the guilty pleas were accepted, it does not diminish the necessity to determine the issue of competency, because competency is an ongoing matter appropriately raised, "whenever evidence of incompetence appears." *Id.* at 180. Therefore, we remand to the trial courts for a determination of defendant's competency, and the trial courts are to make appropriate dispositions based on such determination. [*Whyte, supra* at 414.]

Dr. Clark's report raised significant concerns about defendant's capability to understand the proceedings and what he was waiving by entering his plea. We conclude that the trial court abused its discretion in failing to find a bona fide doubt with regard to defendant's competence. Accordingly we remand this case to afford defendant the opportunity for a competency evaluation and hearing. These measures may be ordered nunc pro tunc, such that a favorable finding would allow the plea to be left intact. If defendant is found incompetent, however, the motion to withdraw the plea would have to be granted.

Remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood  
/s/ Alton T. Davis